

## House T&I summary January 30, 2014

### Quick summary:

- Provided assistance to WVDEP with development of air and water monitoring strategies;
- Provided assistance with implementation of sampling and analysis plans as requested by WVDEP;
- Assisted facility with review of safety plans;
- Coordinated with USCG and WVDEP to approve the facility plans for boom and drain systems;
- Provided consultation to WVDEP regarding the site remediation plan development and implementation.

### EPA's Role in WV response:

At the Freedom Industries response in WV, the WV Department of Environmental Protection is the lead agency responsible for overseeing the response activities and the EPA has offered support and continues to work closely with other federal and state agencies in West Virginia as they begin implementing a plan for getting the water system back on-line.

EPA also provided two On-Scene Coordinators to help with the local response, and provided technical assistance to the State of West Virginia and the West Virginia American Water Company (WVAWC) on a plan for flushing the system. State and Federal (ATSDR/CDC) health officials determined that a level of 1 part per million (ppm) of MCHM is protective of public health and the State/WVAWC has used the flushing process to assure that the 1 ppm level is achieved throughout the system. EPA has offered technical assistance to the State during the restoration efforts.

### EPA Authorities

Depending on the nature of a spill, EPA has statutory response authorities under the **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund)**, and the **Oil Pollution Act (OPA)**. EPA provides support when requested or when state and local first responder capabilities have been exceeded. In carrying out these responsibilities, EPA coordinates with other EPA programs, other federal agencies, states, tribes, and local governments. EPA has not been requested to exercise its authority.

With respect to prevention and preparedness in advance of a spill or release, EPA also has statutory regulatory authority for oil storage facilities under the **Clean Water Act (Spill Prevention, Control, and Countermeasure Program – SPCC)** which pertains to oil spills but currently does not cover spills of hazardous substances) and for chemicals under the **Clean Air Act (Risk Management Program – RMP – to address methods to minimize and respond to releases)**.

- The Freedom Industries facility in West Virginia is not regulated under the EPA's RMP since it is not on the list of hazardous substances and the SPCC does not apply to the tanks that released MCHM since it is not an oil.

The WV facility does not fall under EPA's **Resource Conservation and Recovery Act (RCRA)** program because the material leaked is a "product" and not a "solid waste" or hazardous waste under RCRA that

would require a permit and storage and management requirements, as defined under RCRA Subtitle C. (We did not need to exercise our 7003 authority)

Under the **Emergency Planning and Community Right-to-Know Act (EPCRA)**, state and local responders are to be provided hazardous information directly from the facility owners or operators. The state and local responders can then use this information to minimize risk and develop response plans.

**EPCRA 304/311/312:** At the WV facility, there is no reportable quantity for MCHM so a release of that substance is not subject to CERCLA 103 or EPCRA 304 reporting. However, certain chemicals stored on site, specifically MCHM, are subject to OSHA Hazard Communication Standard (29 CFR 1910.1200) and therefore the facility is required to submit Tier II forms pursuant to EPCRA 311/312 to the State Emergency Response Commission if they store a quantity of 10,000 lbs. or more in a calendar year. We have received a copy the current facility Tier II report, dated February 2013 and submitted to the state. The report for calendar year 2013 is due to the state on March 1, 2014.

**Toxics Substances Control Act (TSCA):** 4-methylcyclohexane was one of more than 60,000 chemicals in commerce when the Toxic Substances Control Act (TSCA) was passed in 1976. The 1976 statute “grandfathered” in existing chemicals, and provided EPA with very limited ability to require testing on those existing chemicals to determine if they are safe. EPA continues to support much needed legislative reform to ensure that the Agency has updated authority to more effectively assess and regulate potentially harmful chemicals.

Under the TSCA Chemical Data Reporting Rule, EPA collects production and use information on chemicals, which they can claim as confidential. EPA received chemical data reporting for propylene glycol phenyl ether, or PPH, although none of the submitted information was claimed to be confidential business information (CBI). EPA also has toxicity data on this chemical because it was subject to the OECD Screening Information Data Set (SIDS) program.